

Reply to the Interview Summary

Applicant contacted the Examiner by telephone on June 9, 2006, and June 12, 2006, requesting clarification of a non-final 102(b) rejection of Claim 18 based on US Patent No. 6,060,071 to Bich et al. in the March 10, 2006, Office Action. In preparing a Response to the March 10 Office Action, the Applicant attempted to retrieve a copy of the US Patent 6,060,071 and upon doing so discovered that the patent was issued not to Bich, but was instead issued to Motitschke, et al. and did not relate to the technology at issue in this Application No. 10/691,213, but instead related to "Ectoin and ectoin derivatives as moisturizers in cosmetics."

Additionally, the Applicant attempted a search of issued US Patents to Bich which returned approximately 250 patents and the Applicant was unable to search through all 250 Patents to locate the proper Bich reference. No further information was provided to the Applicant with the March 10, 2006, Office Action which would have allowed the applicant to determine the actual patent that the Examiner used as the basis of his 102(b) rejection of Claim 18.

Once the Examiner returned the Applicant's telephone call on June 14, 2006, the Applicant explained the situation to the Examiner and requested a corrected Office Action be issued pursuant to the procedure outlined in the Manual of Patent Examining Procedure ("MPEP") Section 710.06 which governs such mistakes. The Examiner stated that the reference should have been US Patent No. 6,050,071 and that the Applicant should have known what reference the Examiner was relying on since the Examiner claimed the Bich reference was correctly cited in PTO Form-892 Notice of References Cited.

The Applicant pointed out to the Examiner that there was no PTO Form 892 included with the Office Action of March 10, 2006, and that since this was a second non-final rejection that the Applicant thought that the Examiner might have put down the incorrect inventor name since the patent number was obviously in error. The Examiner then suggested that the Applicant should have attempted to compare the portion of a drawing from the Bich reference to the prior art of record in the application to determine which reference the Examiner was referring to.

The Applicant told the Examiner that the Applicant thought that was unreasonable and requested the Examiner follow the provisions of MPEP Section 710.06 which requires that where the Examiner incorrectly cites a reference in an

Office Action, and the Applicant notifies the Examiner of this within the period of time set to reply in the Office Action, the Applicant is entitled to a corrected Office Action with a period of reply equal to the time remaining in the reply period, but in no case, less than one month. The Examiner refused to follow the procedure outlined in MPEP Section 710.06 and incorrectly limited the application of MPEP 710.06 to the first 30 days after an Office Action was mailed out rather than applying MPEP 710.06 to the entire period for reply as clearly set out in MPEP 710.06.

The Applicant requested to speak with the Examiner's supervisor, Thomas B. Will, in an attempt to resolve the matter. The Examiner indicated that the applicant was welcome to contact Mr. Will.

The Applicant contacted Mr. Will and explained the situation to him. Mr. Will stated that he would check into the matter and call the Applicant back. When Mr. Will returned the Applicant's call, Mr. Will informed the Applicant that the in this case MPEP Section 710.06 would not apply because the Applicant had the Bich reference properly cited in a PTO Form 892 and that he had run this past his supervisor Mr. Dan Hajec. Applicant requested to speak with Mr. Hajec to attempt to resolve the matter. Mr. Will indicated the Applicant was welcome to contact Mr. Hajec since he would handle any appeal of Mr. Will's decision anyway.

The Applicant then contacted Mr. Hajec and explained the situation. Mr. Hajec consulted with the Patent Application Information Retrieval database ("PAIR") and discovered that PTO Form 892 was not mailed to the Applicant with the March 10, 2006, Office Action. Therefore, due to the error of the Primary Examiner, and the Applicant's inability to respond to the Office Action, Mr. Hajec agreed that the procedure outlined in MPEP 710.06 should be followed and that the Office Action would reissue with a 30 day period of response. The Applicant would like to thank Mr. Hajec for his assistance in resolving this matter.

Remarks/Arguments

In the Office Action Mailed June 21, 2006, the Examiner allowed claims 19-24. The Applicant notes with appreciation the allowance of claims 19-24.

In the June 21, 2006, Office Action the Examiner rejected claim 18 "under 35 U.S.C. 102(b) as being anticipated by Bich et al. (part of the record)." The applicant believes the Examiner is referring to US Patent No. 6,050,071 to Bich et al. and the Applicant replies as follows based on this assumption.

In the June 21, 2006, Office Action the Examiner stated that the Bich reference discloses "a roll body (starting at the front auger ref 30 and ends at rear end of stalkroll ref 40), drivers (unnumbered driver at auger 30, and flutes ref 43); driver inner edge is adjacent to the body (see fig 3); body front end diameter is greater than the rear end diameter of the body (see fig 3, the rear edge of auger 30 is slightly higher than the body 4); the driver front end diameter is less than the rear diameter (see unnumbered front driver is slightly below the rear driver 43)."

The Applicant respectfully disagrees.

The Examiner appears to be relying on close up portions of Figure 3 in the '071 patent, however, the descriptions of the drawings do not support the Examiner's interpretation. The Examiner attempts to use the same blown up portion of Figure 3 of the '071 patent to support the assertion that the "front body's diameter is greater than the rear body" and the "driver front end diameter is less than the rear diameter.

This is not the case.

What the Examiner points to is the interface between the front auger 30 and the stalkroll (see col. 5 ll. 34-37). One of ordinary skill in the art recognizes that the auger is not a part of the stalkroll but is a separate element. The '071 patent treats the two as separate elements. For example, in col. 3 ll. 55-62 the '071 patent points out that "the corn stalks are drawn reward by the front auger 30 and then cut by the stalkroll 40." Additionally, the front auger 30 is not a part of a roll body as disclosed and claimed by the Applicant. Furthermore, the body of the stalkroll in the '071 patent appears to the Applicant to have the same diameter in the front as the back. Moreover, the diameter of the stalkroll in the '071 patent does not appear to change at any point along its length. Thus, nowhere in the '071 patent are all of the elements of Applicant's Claim 18 disclosed or suggested.

Since independent claim 18 contains elements not disclosed or suggested in the prior art of record the Applicant respectfully requests allowance of claim 18.

In conclusion, since the Examiner indicated that Claims 19-24 are allowable, and the Applicant believes the Examiner's rejection of claim 18 has been overcome, the Applicant believes the application is in condition for allowance, and such allowance is respectfully requested.

Any fees or charges due as a result of filing of the present paper may be charged against Deposit Account 04-0525. Two duplicates of this page are enclosed.

Respectfully,



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